

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THEOFANIS PAPADOPOULOS, *et al.*,

Plaintiffs,

v.

FRED MEYER STORES, INC.,

Defendant.

No. C04-0102RSL

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
"CATCH ALL" MOTION IN LIMINE

This matter comes before the Court on "Plaintiffs' 'Catch All' Motion in Limine " (Dkt. #78). In their motion, plaintiffs present nine separate issues for the Court's consideration. Having reviewed the memoranda submitted by the parties, the Court finds as follows:

A. Reference to lottery

Plaintiffs move to exclude any reference by defendant to the lottery or games of chance as irrelevant under Fed. R. Evid. 402 and unfairly prejudicial under Fed. R. Evid. 403. This motion is unopposed. See Response (Dkt. #90). Accordingly, plaintiffs' motion is GRANTED and defendant is precluded from presenting any reference to the lottery or games of chance at trial.

B. Reference to plaintiffs' demands or arguments

Plaintiffs move to exclude "any reference during voir dire, opening statement, or any

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1 other time, regarding a specific or approximate amount of money that defense counsel
 2 anticipates plaintiffs will demand during closing argument.” This motion is unopposed and is
 3 GRANTED. See Response (Dkt. #90).

4 **C. Settlement negotiations**

5 Plaintiffs move to exclude under Fed. R. Evid. 408 any reference of settlement
 6 negotiations or conduct or statements during settlement negotiations. This motion is unopposed.
 7 See Response (Dkt. #90). Plaintiffs’ motion is GRANTED with the qualification this evidence
 8 will not be excluded if it is offered for another purpose under Rule 408.

9 **D. Collateral sources of benefits**

10 Plaintiffs move to exclude “any reference or evidence of any collateral source benefits
 11 received by Mr. Papadopoulos” and “any reference to any collateral source benefit [Mrs.
 12 Papadopoulos” received as a result of her [motorcycle accident].” Defendant does not oppose
 13 the exclusion of evidence concerning any source of payments plaintiffs may have received for
 14 the alleged June 19, 2003 injury to Mr. Papadopoulos. See Response at 3. Defendant also does
 15 not oppose the exclusion of any amounts of any collateral source benefits plaintiffs may have
 16 received. Id. Accordingly, the Court GRANTS plaintiffs’ motion to the extent that defendant is
 17 precluded from presenting at trial evidence of the amount of any collateral source benefits or any
 18 benefits received by plaintiffs for the June 19, 2003 incident. See Cox v. Spangler, 141 Wn.2d
 19 431, 440 (2000) (“[T]he very essence of the collateral source rule requires exclusion of evidence
 20 of other money received by the claimant so the fact finder will not infer the claimant is receiving
 21 a windfall and nullify the defendant’s responsibility.”) (citing Johnson v. Weyerhaeuser Co., 134
 22 Wn.2d 795, 803 (1998) (emphasis added).

23 Mr. Papadopoulos’ pre-June 19, 2003 medical condition is relevant in this case because it
 24 bears on the issue of his earning capacity both before and after the incident. Accordingly, the
 25 exclusion of collateral source benefit evidence is limited to evidence relating to “other money

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received.” By this ruling, defendant is not precluded from presenting relevant evidence about plaintiff Mr. Papadopoulos’ medical condition where it does not include reference to the amount of benefit payments received by the plaintiffs.

E. Social security benefits and state welfare benefits

Plaintiffs move to exclude “[e]vidence of any social security or state welfare benefits received by either Mr. or Mrs. Papadopoulos before or after this incident.” See Motion at 4. Defendant opposes plaintiffs’ motion because it claims that Washington Department of Social and Health Services (“DSHS”) records contain relevant evidence concerning Mr. Papadopoulos’ pre-June 19, 2004 medical condition and earning capacity. See Response at 2.

Plaintiffs’ motion is GRANTED to exclude evidence relating to the amount of plaintiffs’ Social Security benefits and state welfare benefits. See Cox, 141 Wn.2d at 440; Fed. R. Evid. 403. Mr. Papadopoulos’ pre-June 19, 2003 medical condition is relevant in this case because it bears on the issue of his earning capacity both before and after the incident. Therefore, by this ruling, defendant is not precluded from presenting relevant evidence about Mr. Papadopoulos’ medical condition where it does not include reference to Social Security or state welfare benefit payments received by the plaintiffs.

F. Reference to the effect or results of a claim, suit, or judgment upon insurance rates, premiums, or store charges to other customers

Plaintiffs move to exclude “any mention, comment, question, argument, or other reference whatsoever made to the effect or results of a claim, suit or judgment upon the insurance rates, premiums, or defendant’s charges to other customers.” See Motion at 5. This motion is unopposed by defendant.

Plaintiffs’ motion is GRANTED. The Court excludes any argument or colloquy at trial pertaining to how a jury verdict may affect insurance premiums because the probative value of this information is substantially outweighed by danger of unfair prejudice under Fed. R. Evid.

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403 and is not relevant under Fed. R. Evid. 401.

G. References to plaintiffs' post-judgment lifestyle

Plaintiffs move to exclude any references to lifestyle changes the plaintiffs plan to make if they receive an affirmative jury verdict. See Motion at 5. Defendant does not oppose this motion. Plaintiffs' motion is GRANTED and the Court excludes as not relevant under Fed. R. Evid. 401 any references at trial to plaintiffs' post-judgment lifestyle.

H. Reference to motions in limine

Plaintiffs move to exclude any reference to motions in limine or the Court's ruling on the motions. See Motion at 5. This motion is unopposed by defendant. Plaintiffs' motion is GRANTED and the Court excludes any party from referencing a motion in limine or the Court's ruling on any motion in limine.

I. Reference to absence of other accidents

Relying on Tanguma v. Yakima County, 18 Wn. App. 555 (1977), plaintiffs move to exclude the absence of prior accidents involving the floor tile at issue in this case. See Motion at 6. Defendant opposes the motion arguing that the absence of prior accidents is relevant evidence and is not excluded by Washington law. See Response at 3-5.

Contrary to plaintiffs' assertion, evidence of the absence of prior accidents is admissible under Washington law. The Tanguma case, cited by plaintiffs, holds "[t]he fact of, or absence of, prior accidents may be weighed in determining whether the situation was inherently dangerous, but it is only one element in the total equation – not the sine qua non of liability." Id. at 563; see also Ingersoll v. DeBartolo, Inc., 123 Wn.2d 649, 655 (1994) (holding that in the premises liability context, "the historical experience of slip and fall accidents prior to this event" is relevant to the issue of notice).

Furthermore, the Court finds that evidence of a lack of prior accidents involving the floor tile is relevant and the probative value of this type of evidence is not substantially outweighed by

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1 danger of unfair prejudice to plaintiffs under Fed. R. Evid. 403. For these reasons, plaintiffs'
2 motion to exclude evidence of the absence of prior accidents is DENIED.

3 For all of the foregoing reasons, "Plaintiffs' 'Catch All' Motion in Limine " (Dkt. #78) is
4 GRANTED in part and DENIED in part.

5 DATED this 8th day of November, 2006.
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9 Robert S. Lasnik
10 United States District Judge
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